

**Remarks**

Claims 1-18 remain pending in the application.

Claims 1-18 stand rejected under 35 USC § 103(a) as being unpatentable over Münzenberger et al. (U.S. No. 6,161,393) in view of Rodriquez (U.S. No. 5,588,267).

Independent claim 1 is directed to a firestop device including a housing and firestop material arranged in the housing, wherein the housing includes at least one frangible connection defining a removable band. Similarly, independent claim 18 is directed to a firestop device comprising a housing including a plurality of longitudinally arranged frangibly connected circumferential bands. The frangible connections allow unnecessary bands that extend beyond the partition after the concrete has been poured to be readily removed by a user. In this manner, the height of the device can be modified to correspond to the thickness of the partition. The teachings of these references in no way render the present invention unpatentable because Rodriquez is non-analogous art, and because even if Rodriquez were analogous art, there is no motivation, teaching, or suggestion to combine the references.

Münzenberger et al. discloses a masonry lead-in fixture including a housing having a flange, an intumescent mass, and a partition located in the housing. As noted by the Examiner, however, Münzenberger et al. fails to disclose a device including at least one frangible connection transecting the housing defining a removable band.

Rodriquez relates to roof flashings. Applicant respectfully submits that Rodriquez is non-analogous art. Roof flashings are used to seal around pipes extending through roofs or other exterior walls of houses and other buildings. (See Rodriquez, col. 2, lines 12-14). The present invention, in contrast, relates to firestop devices for preventing the spread of fire and smoke from one compartment of a building to another. (See present application at page 1, lines 12-30). Because Rodriquez is from the technological field of roof flashing and the present invention is from the technological field of firestopping, Rodriquez is not within the same field of endeavor as the present invention, and is therefore non-analogous art. The combination of elements from non-analogous sources, in a manner that reconstructs the applicant's invention only with the benefit of hindsight, is insufficient to present a prima facie case of obviousness. In re Oetiker, 24 USPQ2D 1443, 1446 (Fed. Cir. 1992).

In addition, the Rodriquez reference is not reasonably pertinent to the particular problem involved with the present invention because the present invention is concerned with the problem of firestopping and Rodriquez is concerned with roof flashing. Furthermore, the present invention is concerned with the particular problem of adjusting the height of the device depending on the thickness of the partition into which the device is installed, and Rodriquez is concerned with the problem of accommodating pipes having different thicknesses. To address the particular problem of adjusting the height of the device, the housing of present invention is provided with frangible connections defining removable bands to allow the height of the housing to be shortened, thereby to reduce the height of the housing depending on the thickness of the partition into which the device is installed. (See present application at page 3, lines 19-22) In contrast, to address the problem of accommodating pipes having different thicknesses, the Rodriquez roof flashing is provided with an annular groove 20 to permit a larger diameter set of edge seals to be used for sealing against larger size pipe. (See Rodriquez, col. 4, lines 6-13). This problem is completely unrelated to the present invention. The Rodriquez groove 20 is not provided to allow the height of the roof flashing to be shortened so that the flashing can be used in partitions having a variety of thicknesses, and the information from Rodriquez is so far removed from the field to which the present invention pertains that the information is not prior art.

Moreover, even if Rodriquez were analogous art, there is no teaching, motivation, or suggestion to combine the references in the manner suggested. The Examiner states that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the frangible connection of the housing and the pull tab to grasp the band of Rodriquez with the housing of the firestop device of Münzenberger et al. in order to provide different lengths of the housing for different sized walls (column 1, lines 35-37). Applicant disagrees.

Münzenberger et al. indicates that the lengthening pipe 7 can be "easily cut-off" (col. 4, line 14, emphasis added), so there would be no reason to provide the lengthening pipe with frangible connections to modify the length. And the Rodriquez roof flashing is not provided with connection 20 to "provide different lengths of the housing for different sized walls" as suggested by the Examiner, but is provided to permit the larger diameter edge seals to be used for sealing

larger pipes (col. 4, lines 6-8). Thus, there would be no reason to combine the references in the manner suggested.

In addition, the Rodriquez roof flashing is provided with groove 20 to allow a seal to be formed with pipes of different diameters. The Münzenberger et al. device, however, is provided with a partition which forms a seal with the pipe inserted through the device, and it is not necessary to remove any portion of the lengthening pipe to allow a seal to be formed. Thus, because the Münzenberger et al. device, as disclosed, can be used with pipes having a variety of diameters, there would be no reason to modify the device so that it could be used with pipes of varying diameter. In other words, the Münzenberger et al. device already has the feature for which the groove 20 is provided in the Rodriquez roof flashing (i.e. to accommodate pipes of varying diameters), so there would be no reason to modify the Münzenberger et al. device to include such a groove.

The remaining dependent claims, as depending from allowable claims, are also deemed to be in condition for allowance.

In view of the foregoing, it is submitted that the application is in condition for allowance. Reconsideration of the application is requested.

Respectfully submitted,

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